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Court of Indiana considered the applicability of an established rule of the English common law to the conditions prevailing in Indiana. It is the well-settled law in England, since the case of *Brown v. Wootton*,¹³ that a judgment, although it is not satisfied, may be pleaded in bar in an action for the same cause brought against another as a joint tort-feasor. The great majority of American courts have held that nothing short of full satisfaction of a former judgment in tort can be a bar to an action against a joint tort-feasor who was not a party to the first judgment.¹⁴ The Indiana court refused to approve the English rule, although the legislature of that state expressly provided: "The law governing this state is declared to be . . . the common law of England, and statutes of the British Parliament made in aid thereof prior to the reign of the James the First [excepting certain enactments] which are of a general nature, not local to that kingdom." The court in reaching its conclusion said: "No rule of the common law could survive the reason on which it was founded. . . . It seems reasonable to hold that the injured party should be entitled to one compensation, and no good reason has been suggested to show why an ineffectual attempt to collect judgment rendered against one of several joint tort-feasors should operate to bar further proceedings against another who is jointly liable."

While it is unquestionable that the court may properly reject a common-law rule if it is inconsistent with the spirit of American institutions and repugnant to the modern idea of justice, it is equally well settled that the power to declare a rule of the common law inapplicable should be used sparingly. Legislative repeal is the ordinary remedy to be utilized when an established rule of the common law is found to be undesirable; it is only the exceptional case that permits of the drastic remedy of judicial abrogation of a settled rule of the common law.

L. E. L.

CONSTITUTIONAL LAW — POLICE POWER — RAILROAD PASSES — During the middle and latter half of the nineteenth century, it became a well-known custom for railroads to issue passes to public officials of the state. This was recognized as an evil and was dealt with by statute in many jurisdictions. Pennsylvania, for example, did what would seem to be the natural thing and provided that no railway should grant free passes to any person except officers or

¹³ Cro. Jac. 73, Yelv. 68 f. (Eng. 1606). *Accord*, *Bushland v. Johnson*, 15 C. B. 145 (Eng. 1854); *Brinsmead v. Harrison*, L. R. 7 C. P. 547 (Eng. 1872).

¹⁴ *Blackman v. Simpson*, 58 L. R. A. 410 (Mich. 1899).

¹ Constitution of 1874, Art. 17, Sec. 8.

employees of the company.¹ Likewise, Congress prohibited the issuance of free passes except to certain specified persons not including public officials.² In Nebraska, it was made a misdemeanor for a railroad to issue, or for any person, with a few exceptions, to accept, a free ticket.³ New Jersey, however, dealt with this matter differently than most of the other states and the steadfast purpose of the legislature in that state has been to make passes compulsory rather than to prohibit them. This was done, at first, by provisions in the railway charters that certain heads of state departments should be carried free of charge. Then the General Railroad Act of 1873 provided that certain state officials should be carried free, but this applied only to railroads incorporated under the Act. This was followed by the Act of 1911, which provided that certain designated officials, about for hundred in all and including the Governor and members of the legislature during their various respective terms of office, should pass and repass free of charge on all railroads now or hereafter operated in New Jersey.⁴

The validity of the New Jersey Act of 1911 has been discussed in two recent cases, the alleged invalidity being a violation of the Fourteenth Amendment of the Federal Constitution. In *D. L. & W. R. R. Co. v. Public Utilities Board*, a member of the State Water Supply Commission sought to sustain his right to travel free of charge under the act but it was held that the act as applied to him was unconstitutional as it deprived the railroad of due process of law.⁵ In a more recent case, it was held that the Secretary of the Governor was entitled to transportation free of charge and that the act as applied to him was not in violation of the Fourteenth Amendment.⁶ It was pointed out by the court that the harm resulting from the custom of the railroads to give passes to public officials was in the impression made upon the public mind, which looked with disfavor upon this practice which placed those in charge of the government under obligations to the railroads, and that the policy of the New Jersey Legislature had been to remove the element of gratuity by making the transportation obligatory upon the railroads. In passing upon the constitutionality of the act with regard to these different officials, the test adopted by the court was that if the official in question held a position where his favor might be advantageous or his disfavor detrimental to the railways, the act requiring the railway to transport such an official did not work a deprivation of property without due process of law, for the act in such a case would be a police regulation to carry out the policy of the legislature.

² Act February 4, 1887, c. 104, Sec. 1, as amended; Act June 29, 1906, c. 3591, Sec. 1; Act April 13, 1908, c. 143, and Act June 18, 1910, c. 309.

³ Cobbeys Comp. Stat., Secs. 10664-10665.

⁴ N. J. Laws of 1911, Chap. 129.

⁵ 85 N. J. L. 28 (1913).

⁶ *Pennsylvania R. R. Co. v. Herrmann*, 96 Atl. 665 (1916).

In the earlier New Jersey case,⁷ the court cited *Charlotte, Columbia & Augusta R. R. Co. v. Gibbes*⁸ as nearly in point. This case sustained as constitutional a statute requiring the salaries and expenses of the State Railroad Commission to be borne by the several railroads within the state. But it is submitted that this statute was sustained as an exercise of the taxing power in the nature of a local assessment. The court indicated clearly that if the tax were levied to pay for services in no way connected with the railways, there would be a violation of the Fourteenth Amendment. No attempt was made to sustain the New Jersey Act as a revenue-raising measure, "for obvious reasons" said the court.

Although, in the exercise of the police power, the means to be employed are primarily within the discretion of the legislature, it would seem that the means adopted by the New Jersey Legislature in casting upon the railways the duty of carrying about four hundred persons without compensation, whether in pursuance of their official duties or pleasure, approaches very closely to an arbitrary abuse of its discretion and consequently not a valid exercise of the police power, for while it is true that a state can compel uncompensated obedience to a valid exercise of its police power without violating the Fourteenth Amendment, such a regulation must have a substantial relation to the end to be accomplished.⁹

Moreover, it would seem that the evil of this custom of giving passes was deeper than the mere unfavorable impression upon the public mind. It is submitted that if this New Jersey legislation is valid as an exercise of the police power, it would be an equally valid police regulation for the legislature to provide that the railways should transport doctors or clergymen free of charge.¹⁰ In *Interstate Railway Company v. Massachusetts*,¹¹ Mr. Justice Holmes, speaking for himself alone, "hesitatingly agreed" that to require the railroads to carry school children at half price might be justified under the police power saying that "structural habits count for as much as logic in drawing the line" and stating that a like favor upon doctors or workingmen might not be equally valid.

The validity of the New Jersey Act of 1911 was also sustained, in the cases *supra*, as an exercise of the reserved right of the legislature to alter the charters of the corporations, which this discussion does not purport to treat.

R. H. W.

⁷ D., L. & W. R. R. Co. v. Public Utilities Board, *supra*.

⁸ 142 U. S. 386 (1891).

⁹ Mo. Pac. Ry. Co. v. Omaha, 235 U. S. 121 (1914).

¹⁰ N. J. v. Sutton, 83 N. J. L. 46 (1911). Act requiring street railways to transport policemen free of charge while engaged in their public duties was held constitutional as a valid exercise of the police power. *Contra*, Wilson v. United Traction Co., 72 N. Y. App. Div. 223 (1902).

¹¹ 207 U. S. 79 (1907).